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AAR Hermetic, a Division of AAR Allen Services, Inc. and James Novotny. Case 29-CA-23951

July 18, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND COWEN

On September 26, 2001, Administrative Law Judge Eleanor MacDonald issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

¹ The judge dismissed the complaint allegations, relying almost entirely on her credibility findings. The General Counsel has excepted to the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The transcript reveals, however, a factual error appearing twice in the judge's decision. In sec. II.B.1 ("The General Counsel's Version") and sec. III ("Discussion and Conclusions"), the judge states that Charging Party James Novotny testified that he asked Respondent's Human Resources Manager Colleen Quinn four or five questions during the course of his employment application interview. The judge cited Novotny's failure to recall the specific questions as indicative of the unreliability of his recollection. The record establishes, however, that Novotny's testimony is the opposite of what the judge describes; that is, it was Quinn who asked Novotny four or five questions during the interview. We also find no basis in the record for the judge's finding that former steward Walter Cekada's union activity was necessarily "more lengthy" than Novotny's. Neither the misstatement concerning Novotny's interview nor the unsupported finding concerning the length of Cekada's union activity alters our ultimate findings in this case.

Additionally, we wish to draw attention to two statements appearing in sec. III of the judge's decision. First, the judge stated that "[I]f Quinn had wanted to hide purported antiunion animus in the hiring process she would never have recorded and testified about the statements of Novotny [and others] that they supported the Union." Second, the judge stated that "[a]ny shop steward who went through the events of September 26 through 29 in close communication with the Union business agent . . . would have been in possession of the elementary bit of information that AAR had no choice but to recognize the Union." In our view, the judge has exaggerated the evidentiary force of Quinn's conduct and testimony, and of Novotny's association with the union business agent. Nevertheless, we find the evidence the judge relies upon here probative of her findings concerning Quinn's and Novotny's credibility.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. July 18, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

William B. Cowen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Nancy Reibstein, Esq., for the General Counsel.

Timothy O. Skelly, Esq., of Wood Dale, Illinois, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn, New York, on May 22, 2001. The Complaint alleges that the Respondent, in violation of Section 8 (a) (3) of the Act, refused to offer employment to James Novotny. The Respondent asserts that Novotny did not want a job offer and it denies that it engaged in any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and, after considering the briefs filed by the General Counsel and the Respondent, I make the following¹

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with its principal office in Wood Dale, Illinois and a location at 100 Corporate Drive, Holtsville, New York, operates a maintenance facility performing overhaul, repair and exchange of jet aircraft system components. Annually, the Respondent receives at its New York facilities goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of New York. The parties agree, and I find, that the Respondent is an employer engaged in commerce within the meaning of Section 2 (2), (6) and (7) of the Act and that the International Association of Machinists and Aerospace Workers, Local 24, AFL-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

¹ The record is hereby corrected so that at page 144, line 8, the question reads, "did you ever write anything . . ."; at page 166, line 11, the question should read "Did he say he did not want to work for AAR."

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

The jet aircraft system component repair and maintenance facility in Holtsville, NY, has been bought and sold by various entities over the last number of years. In 1998 the facility, then known as Hermetic, was taken over by Honeywell and became known as Honeywell Hermetic. Honeywell Hermetic employed a total of 64 employees of whom 35 were members of the bargaining unit represented by Local 24. Most of these were long-term employees. The unit consisted of electronic technicians.

The business objective of the facility was to have the technicians complete the required operations on the components entrusted to them as quickly as possible so that they could be sent back and returned to use.

In the last week of September 2000 the employees were informed that Honeywell was selling the facility to AAR Allen Services, Inc., (AAR).²

On Wednesday, September 27 AAR distributed employment applications to the employees and it interviewed employees on September 27, 28 and 29. On September 28 a drug screen test was administered to all employees who had submitted employment applications. AAR did not offer jobs to six of the unit employees and four of the non-unit employees. AAR hired the former Union shop steward and two of the three Union committee members. AAR did not offer a job to James Novotny who had served as shop steward since December 1999.

Respondent AAR purchased the assets from Honeywell on Friday, September 29 and it began to operate the business on Monday, October 2.

By letter of October 12, 2000 the attorneys for District 15 ("Local 434") of the International Association of Machinists and Aerospace Workers, AFL-CIO, demanded bargaining for the unit employees of the Respondent AAR.³ The demand stated that business agent James Scagnelli would contact AAR to schedule negotiations. On October 23 Counsel for the Respondent replied that "AAR is willing to meet with Mr. Scagnelli or other duly appointed Union representative (sic) for purposes of bargaining...."

B. The Interviews and Job Offers

1. The General Counsel's Version

James Novotny, who has been an electronic technician for 21 years, worked at Honeywell Hermetic from April 1, 1990 until September 29, 2000, the day the plant was sold to AAR. Novotny testified that after he was elected shop steward in December 1999, he represented several unit employees concerning workplace issues such as refusal of overtime, stalking, failure to read a customer request and sleeping at the bench. Novotny dealt with Honeywell human resources administrator Debbie Mastik, manager Roy Torzullo and supervisors Joe Goulding and James Armstrong. Novotny also met with his superiors concerning the calculation of the speed incentive feature of the collective bargaining contract.

In March 2000, according to Novotny, he was involved in the negotiations for a new contract. He attended four or five bargaining sessions. A tentative agreement was reached on

March 15 and the contract was due to be signed on September 26, 2000.

At 2 PM on September 26 the Union committee met with Honeywell management. Instead of signing the collective bargaining agreement, management told the committee that the facility had been sold to AAR. Novotny testified that the collective-bargaining agreement was not part of the asset sale.⁴ According to Novotny, in the past when the company had been sold the bargaining agreement had been part of the sale.⁵ Novotny testified that Honeywell executives implied that the Union was not welcome by AAR. When repeatedly questioned by the ALJ and by Counsel for the General Counsel about what Honeywell executives had actually said to imply that AAR did not want the Union, Novotny did not provide any specifics. He only gave vague testimony that Honeywell claimed to have broken a union at Sun Chemical.

The Union committee met with the unit employees to tell them that the facility had been sold. At some point the Honeywell site leader Gary Print joined the group and addressed the work force. He said that he did not know what was going on and he did not know which current employees would be hired by the new owner. The Union said that it would seek to negotiate an "end-out agreement" on behalf of the employees.⁶ Novotny participated in the negotiations with Honeywell for the end-out agreement.

On September 27, AAR representatives came to the facility and met with the Honeywell Hermetic employees. AAR general manager Rob Bruinsma, AAR HR director Tony Napoli and AAR HR manager Colleen Quinn were present. Bruinsma told the employees that AAR was a good company, that it intended to foster growth in the facility and that the employees would find that AAR was a fair employer. In response to a question from an employee about the future plans for Hermetic as an AAR company, the AAR representatives said that "they did not buy this company to dissolve it. However, down the road a year from now, there were no guarantees because upper management could redirect whatever plan they had for Hermetic." Novotny did not identify himself as a shop steward at this meeting and he did not ask any questions of the AAR management team. The employees were given job applications and Novotny filled one out and returned it that day. Novotny acknowledged that on September 27 AAR representatives said that they wanted the Honeywell work force.

After this meeting, Novotny spoke to Union representative Jim Scagnelli who said that the employees should hand in the employment applications and they should not turn down any offers. Scagnelli said the employees should express a desire to stay together as a Union.

Novotny testified that Quinn interviewed him the next day, September 28. He stated that when he arrived at the interview he informed Quinn that he was the shop steward and that he was under a lot of stress from the difficult negotiations for the end-out agreement. Novotny said that Quinn asked him a few questions during the interview although he could only recall one of these. Quinn asked where he would like to be one year from that day and he replied that he had no idea. Novotny did

⁴ There were no AAR representatives present at this meeting.

⁵ The record does not contain any details on this issue. I assume that Novotny referred to the assumption of a contract by a previous purchaser.

⁶ This was an agreement with Honeywell providing certain benefits to the employees.

² All dates are in the year 2000 unless otherwise specified.

³ The record is silent as to the reason for the difference in the number of the Local Union named in the Complaint.

not think that he told Quinn he was going to work for another company. Novotny stated that he asked Quinn four or five questions but he did not testify what these were about. However, he recalled telling Quinn that he would organize the Union. Novotny denied telling Quinn that he did not want to work for AAR and he denied saying that he did not want AAR to make him an offer. Novotny said that at the end of the interview Quinn said, "Well, we're getting nowhere," and then he left the room.

Novotny testified that he never told Quinn that he did not want to work for AAR. He was certain he would not have said that because the Union had instructed employees not to turn down any offers and his wife was expecting a child any day.

Novotny testified that after his interview Torzullo spoke to 15 or 20 unit employees on the shop floor. He stated that Torzullo expounded on the virtues of AAR and asked for everyone's cooperation. Novotny responded that he did not think AAR was a fair and good company and that it did not respect the Union. Novotny believed that AAR was unfair because during the transition period AAR did not announce that it intended to recognize the Union. Novotny said he would fight for the Union. Novotny was loud and he interrupted Torzullo several times. Novotny testified that he thought Torzullo was circumventing what the Union was trying to do. Torzullo said he did not think a Union was needed at the facility. Novotny replied that this was not Torzullo's decision to make. Novotny did not recall saying he would not work for AAR.

Novotny stated that on Friday, September 29 Bruinsma and a man identified as his boss from Chicago met with employees to tell them what AAR was hoping to accomplish. Napoli may also have been present. The meeting began with a description of the purchase and a statement of AAR's intention to harness the talents of the work force and "grow the business." Unit employee Walter Cekada, who had once worked for AAR, asked about the high turnover rate at AAR, about past practices of layoffs and about past anti-union discrimination in 1983.⁷ Novotny testified that he asked how AAR could do away with a Union that had been functioning for 30 years. Novotny said that the work force was talented and wanted to work for AAR but that they were distrustful of AAR. Bruinsma replied that AAR was a changed company that valued its employees and was working for a happier work force. None of the AAR representatives said that they would not recognize the Union.

After this meeting, unit employee Richie Wolfe told Novotny that he thought the unit employees should not accept any job offers from AAR until the Union had negotiated the end-out agreement with Honeywell. Novotny called a meeting of employees to propose this idea. Eighty percent of the unit employees voted to support this tactic. Novotny stated that he then informed the AAR representatives that they should not hand out any job offers until the Union had negotiated its agreement with Honeywell. However, AAR did not honor this request. When Novotny returned to the shop floor he saw that job offer packets were being handed out. He took the offers away from three employees and returned them to Napoli. He chastised the employees who took the offers, among them Richard Badlu and Walter Cekada.⁸

⁷ Cekada had been the shop steward for many years until December 1999.

⁸ The record does not disclose how Novotny reconciled this tactic with Scagnelli's instructions that employees should not turn down any job offers.

Novotny stated that the Union's negotiations with Honeywell for the end-out agreement concluded on Friday, September 29. According to Novotny, employees who went to work for AAR received \$1300 layoff pay. Employees who did not receive a job offer from AAR would be entitled to significant severance pay. Employees who turned down a job offer from AAR would not receive a severance payment from Honeywell. The terms of the agreement also permitted four unit employees to turn down offers from AAR and still receive a severance package that included several months pay and some medical insurance. Novotny claimed that these four were Dominy, Lieberman, Jackson and Toto. Novotny stated that he could have added himself to the list if he had not wished to receive a job offer from AAR and that he could have added any number of employees to the list. Novotny produced a copy of the end-out agreement dated September 29, 2000 that was given to him by the Union. When it was pointed out to Novotny that the contract he had identified as the signed contract did not support his testimony, Novotny disavowed it. The contract provides that one bargaining unit employee not otherwise eligible for severance will be made eligible upon the Union's request. Although the agreement was signed by Scagnelli, Novotny testified that it was inaccurate. The parties did not otherwise authenticate this document and it was not admitted into evidence. Ultimately, Novotny testified that he never received an accurate copy of the end-out agreement and that he did not know what was in the signed and executed agreement.

At 6 P.M. of that day Napoli sat in the cafeteria and called employee's names to give them the job offer packet. Novotny did not get an offer of employment from AAR. Novotny received a severance package of \$9000 from Honeywell and a continuation of medical insurance.

Novotny testified that he began looking for a new job on October 1. He was interviewed by his present employer on October 6 and he began work there on October 16. His new job is about 15 miles farther from his home than was his former job.

2. The Management version

Roy Torzullo is now the vice-president for operations and site manager for Respondent AAR. Torzullo worked for Hermetic for 12 years. He was the operations leader when the facility was owned by Honeywell. Torzullo testified that his managerial position with Honeywell required him to walk through the shop about ten times each day to talk to the men and rally them, to set goals and to monitor production targets. Torzullo recalled that there was a hostile atmosphere in the facility after the sale to AAR was announced. The men were concerned for their future and they expressed their hostility to Torzullo as the representative of the company that was selling the plant. Joe Goulding, now the AAR production manager and formerly the Honeywell program manager, testified that after Honeywell announced that it was selling the facility there was turmoil and hostility in the plant. Goulding recalled that no real work was done for three or four days and that he was not sure the facility could open on the Monday after the AAR purchase was effective.

Colleen Quinn is the AAR Human Resource Manager based at another facility owned by AAR in Garden City, NY. Quinn's responsibilities include benefit administration as well as interviewing and recruitment. Quinn testified that at 10 am on Wednesday morning September 27, Rob Bruinsma, the General Manager of AAR, and HR Director Tony Napoli came into her office and told her to pack up anything necessary and

proceed to the facility to begin interviewing the employees.⁹ Quinn was told that the employees were all considered good employees and that her responsibility was to interview and hire as many of the people as possible so that the Respondent could begin operating the business on Monday morning. Quinn was not given guidelines or criteria as to whom she could hire. Quinn and Napoli proceeded to the facility in Holtsville and prepared a sheet of questions, which they would pose to the employees as they interviewed them. The questions were typed on a single sheet with space to record the answers, and this sheet was duplicated so that a new sheet could be used to record details of each employee's interview.¹⁰ Napoli and Quinn divided up a pile of employment applications that had been filled out by the Honeywell employees and they began interviewing the employees.

Quinn stated that the Respondent's policy requires that a person must be interviewed before being hired. The purpose of the interviews at the Honeywell facility was to hire as many people as possible. Quinn's aim in conducting the interviews was to hire good employees who wanted to do a job for AAR. During each interview Quinn was reaching a decision as to whether she would recommend the person for hiring. The Respondent had to make its job offers on Friday, September 29.

Quinn testified that she interviewed more than one-half of the 64 employees at the facility. As the individual employees came in to be interviewed she would look at their applications and resumes and then she would ask her questions and respond to comments or questions from the employees. Quinn asked them about their current job responsibilities and how long they had been doing their jobs. Quinn wrote down the employees' responses to the questions and she recorded other comments made during the interviews. Quinn tried to make a note of everything the employees said on the interview sheet. As soon as the employees left the room at the conclusion of the interview Quinn wrote her recommendation about hiring on the sheet.

Quinn testified that she interviewed James Novotny on Friday morning, September 29.¹¹ In response to her questions, Novotny told her that he was an electronic repair technician and that he earned \$20.74 per hour. Novotny volunteered that he was the Union shop steward and Quinn noted that fact on the interview sheet.¹² Novotny said that he overhauled and repaired components and performed calibration work. When Quinn asked him what he liked about his current job Novotny replied that he liked the challenges and he liked working with site leader Gary Print. In response to her question about what he did not like Novotny said that he did not like being taken over by AAR and that AAR did not accept the Union or buy into the Union. When Quinn asked what Novotny would like

to do in the future he said he would like to work for an employer other than AAR and to gain some trust in his future employer. Then Quinn asked Novotny what he could contribute to the success of AAR and he answered that did not want to work for AAR and "let's just leave it at that." At this point, Novotny excused himself, stood up and walked out. The interview had lasted about two minutes. Quinn testified that Novotny did not say he wanted to organize the Union and he did not say that he wanted to negotiate a collective bargaining agreement. When Quinn stepped outside the interview room to seek the next employee, she saw Torzullo. He asked her how Novotny's interview had gone and Quinn told him that Novotny did not want to work for AAR.

In response to questions by Counsel for the General Counsel Quinn stated that she did not ask Novotny why he did not want to work for AAR. Novotny had told Quinn that AAR was not accepting the Union. Quinn said that she did not understand this remark because she knew that the company was recognizing the Union and as a shop steward Novotny should have known it too.

Quinn interviewed Walter Cekada, a senior technician who liked his current position and wanted to continue in the same capacity. Cekada told Quinn that he did not want to work for AAR and she had written at the bottom of the interview her recommendation that he not be hired. Quinn testified that Cekada was upset in the interview and had gone "back and forth" whether he liked AAR or not. When Quinn and others spoke to him after the interview he said, "I'm a little upset, I want to work." In addition, Torzullo told Quinn that Cekada should be given a chance because he was very good. Torzullo told Quinn and Napoli that Cekada was needed to run the place on Monday.¹³ In the event, Cekada was offered a job and he accepted. Quinn testified that she did not know that Cekada was a Union shop committee member.

Quinn interviewed unit employee Jesse Werkheiser who told her that he liked his job and did not have any complaints. When Quinn asked Werkheiser what he would like to do in the future he said he would like to work for airlines. In response to the final question as to how he could contribute to the future success of AAR Werkheiser replied that he could continue to work and do his job. Quinn recommended that Werkheiser be offered a position and he was hired.

Napoli interviewed Terrance McDermott, a 13 year employee at the facility. The interview sheet shows that McDermott told Napoli that this was his best job and that people were friendly and he was treated like family. When he was asked about his dissatisfaction, he replied that he felt that he was "being treated like a commodity", that there was management turmoil and that lost people were not replaced. At the bottom of the interview sheet Napoli wrote that McDermott was bitter about his treatment by Honeywell, that he needed a job and was concerned about his family and that he felt the sale by Honeywell had resulted in a loss of his pension credit. Napoli recommended that AAR hire McDermott.

Quinn interviewed Harlan Lieberman, a 21 year veteran employee. Lieberman told Quinn that he did not like anything about his position and that he was "burnt out." When asked

⁹ Neither Bruinsma nor Napoli were called to testify herein.

¹⁰ Each sheet called for the name, current position and salary or wage of the employee. The questions concerned current job responsibilities, what the employee both liked and did not like about his or her current position, what the employee would like to do in the future and how he or she could contribute to the future success of AAR. Although the question does not appear on the printed sheet, Quinn also asked employees whether they wanted to work at the Holtsville or the Garden City facility.

¹¹ Quinn was able to testify about her interview of Novotny without recourse to her notes of the interview and I observed that she had an excellent recollection of the material facts at issue herein.

¹² It is undisputed that Quinn did not question any employees about their Union activities.

¹³ A few salaried employees came to Quinn after their interview and asked not to be made an offer because they preferred to receive severance. When Quinn discussed them with Torzullo the latter said as to two of them that they were key players and they had to receive offers.

about the future he said he wanted to work with computers and stay with the Union and organizing. He concluded by saying that he did not see a future with AAR and that he would prefer not to receive a job offer. Quinn recommended that he not be hired.¹⁴

Quinn interviewed Kevin Dominy. Dominy's answer to what he liked about his current position was that it was a Union shop. When asked what he did not like he referred to the turmoil surrounding management and ownership for the past few years. As to what he would like to do in the future Dominy replied that he wanted to organize to start another union. He said he could contribute to a cohesive workforce. Quinn did not recommend that AAR hire Dominy.¹⁵

When all the interviews had been conducted, Quinn and Napoli put their paperwork together. In making final decisions on whom to recommend for hire, they consulted Torzullo who told them which employees were crucial to getting production started on Monday.¹⁶ Torzullo did not give his opinion of all the employees. After some discussions, Quinn and Napoli recommended to General Manager Bruinsma that all but four of the unit employees be hired. Those not to receive a job offer were Novotny, Dominy, Lieberman, and Bob Jackson. One unit employee, Tom Maddox, was on vacation.¹⁷ Quinn testified that when she made her recommendation not to hire Novotny there was no discussion of the Union with Napoli and Bruinsma. Quinn would not have hired Novotny even if he had not told her that he was the Union shop steward. Quinn stated that it was her job to hire people who want to work and do a good job for AAR and Novotny had told her twice during the interview that he did not want to work for AAR. Quinn said that she did not make any hiring decisions based on Union activity.

Vice-president for operations Torzullo testified that he was the last one hired by AAR. Torzullo completed a job application on Wednesday September 27. He was interviewed by three high level managers of AAR at 8 PM on Friday the 29th and at the end of the interview he knew that he would receive a job offer. Although Torzullo tried to emphasize that he was not actually offered a job until the evening of September 29 it is clear that he hoped to be hired by AAR and that he wanted to insure a smooth transition. Torzullo, who had worked for Hermetic and then Honeywell for a total of 12 years, was familiar with the qualifications and skills of the employees. Torzullo stated that AAR had to operate the business on the Monday after the asset purchase and it needed all the current people to maintain production goals. Torzullo saw Quinn after she interviewed Novotny on September 29 and she told him that Novotny was very upset and that he did not want to work for AAR. Although Quinn and Napoli did not consult Torzullo generally about the hiring process, they did talk to him on Friday afternoon when they told him the names of those people who did not want to work for AAR. Torzullo recalled that the people who did not want jobs were Cekada, Jackson, Novotny, Lieberman, Dominy, Helen Barbarito, Jerry McGuire and Jennifer Carroll. Torzullo told Quinn and Napoli that Cekada was a key technician and that his skills were irreplaceable. He also informed them that they had to hire non-unit employees Barbarito, McGuire and Carroll in order to conduct business on Monday morning.

Torzullo testified that he had no specific discussion concerning Novotny with Quinn or any other AAR employee. He was never asked for a list of union supporters.

On the afternoon of Friday, September 29 Torzullo talked to the men on the shop floor. Torzullo said he felt as though he were being verbally assaulted by the men whose hostility was directed at him as the representative of the company that was selling their employer. During this discussion Torzullo heard Novotny say that he would not want to work for a company that is not willing to negotiate with the Union or does not recognize the Union. He implied that he did not want to work for AAR. Torzullo testified that he replied that the Union did not offer any benefits for a company the size of Hermetic. Torzullo was not an AAR employee when he made this comment and he had not received a job offer from AAR. He had not been asked to make this statement and AAR did not know that he was expressing this opinion to the employees.

AAR production manager Joe Goulding testified that he heard Torzullo speaking to the men on the afternoon of Friday September 29.¹⁸ Goulding stated that he heard Novotny say that he did not want to work in a non-union environment and that he did not want to work for AAR.

Quinn testified that the end-out agreement between Honeywell and the Union provided that the Union could select one unit employee to receive severance even though that employee could have continued to work at the facility under AAR. Quinn was informed that unit member Emmanuel Toto had been designated by the Union as eligible to receive a severance payment from Honeywell even though AAR wanted to employ him. As a result, AAR did not offer a job to Toto.

3. Meeting of Novotny and Goulding

Novotny testified that during the Christmas season he attended a party where he saw "Doug Goulding", whom he identified as a team leader at Honeywell and currently a supervisor at AAR.¹⁹ According to Novotny after the two had reminisced about their days at Honeywell Goulding told him, "You know, you still would be doing that, if it wasn't for that union stuff." Goulding, who gave him name as "Joe Goulding" recalled the encounter at the Christmas party. Goulding testified that Novotny said, "You know why I didn't get an offer," and that he replied, "No, I don't." Goulding stated that he had no involvement in hiring and that no one at AAR ever consulted with him on the subject.

III. Discussion and Conclusions

Issues of credibility dominate this case.

After consideration of the record and my impressions of the witnesses I have decided to credit the testimony of Quinn, Torzullo and Goulding. Quinn had excellent recall, without the

¹⁴ The General Counsel does not contend that AAR unlawfully failed to hire Lieberman.

¹⁵ The General Counsel does not contend that AAR unlawfully failed to hire Dominy.

¹⁶ Quinn did not consult any other supervisors.

¹⁷ When Maddox returned from vacation he begged Quinn not to make him a job offer because he wanted to retire and collect his severance. AAR did not offer a position to Maddox.

¹⁸ Goulding was an impressive witness who was cooperative on cross-examination. Goulding was certain that the meeting he attended was on Friday, September 29. Goulding went home that Friday evening not knowing who had a job "except myself." He had accepted a job offer from AAR on Friday.

¹⁹ This party took place after Novotny had filed an unfair labor practice charge.

use of notes, of the details of her interviews with the employees. In addition, the notes themselves corroborated her recollection. Although the General Counsel has attacked Quinn's credibility and her notes as self-serving and tailored to the Respondent's case, I find that the opposite is true. If Quinn had wanted to hide purported anti-union animus in the hiring process she would never have recorded and testified about the statements of Novotny, Lieberman and Dominy that they supported the Union. Moreover, Quinn's candid description of the chaotic and hurried atmosphere in which the interviews were conducted has the ring of truth. Quinn and Napoli had to interview and provide drug screening for 64 employees in about 2 ½ days and they had to accomplish this task in a strange plant filled with apprehensive and hostile employees. Moreover, Quinn was cooperative in the face of a vigorous cross-examination by Counsel for the General Counsel, and she answered questions to the best of her recollection. Torzullo's testimony also strikes me as truthful. Despite the fact that it did not help the Respondent's case, Torzullo admitted telling a group of employees that the Union did not offer advantages to the Hermetic plant. Torzullo did not try to deny that he heard Novotny make statements of support for the Union. Finally, Goulding was a confident witness who was sure of what he heard and when he heard it. He was cooperative on cross-examination and his demeanor was particularly impressive.

On the other hand Novotny was a witness who had carefully prepared his testimony and, I believe, slanted it in the way most favorable to the General Counsel's case. Most significantly, Novotny exaggerated his involvement in the negotiation of the end-out agreement with Honeywell. Novotny tried hard to portray himself as the only negotiator but it is clear that Union business agent Scagnelli was actively engaged and was issuing instructions to the unit employees. Although Novotny said that he negotiated the end-out agreement, that he could have added names to the list of employees refusing to work for AAR but still receiving severance and, indeed, that he could have added his own name had he wished to forego a job with AAR, Novotny was ignorant of the agreement's actual provisions. Novotny admitted that he did not know what language the agreement contained and he could not state who actually received the special severance pay. Novotny, who said that he had been given a signed copy of the agreement by the Union, disavowed the copy he produced during the instant hearing when it was pointed out to him that the written agreement contradicted his testimony about its contents. Further, Novotny presented himself as a dedicated shop steward who was intimately involved in many labor management issues with Honeywell, but he was inexplicably ignorant of the plain fact that once AAR hired a majority of Honeywell's unit employees it was bound to recognize the Union. Time and again in the instant record Novotny is quoted as saying that he did not want to work for AAR because it did not accept the Union. Any shop steward who went through the events of September 26 through 29 in close communication with the Union business agent with whom he was purportedly joined to negotiate the end-out agreement would have been in possession of the elementary bit of information that AAR had no choice but to recognize the Union. There are other problems with Novotny's credibility. He had a very incomplete recollection of his interview with Quinn, the central event in AAR's failure to hire him. Novotny stated that Quinn asked him a number of questions but he could only recall Quinn's question about where he would like to be in

one year and his reply that "he had no idea." Novotny could not recall any of the four or five questions that he said he had asked Quinn. He only recalled telling her that he was the shop steward and that he would organize the Union. Novotny recalled that at the end of the interview Quinn said, "Well, we're getting nowhere." This statement is puzzling in Novotny's version of the interview which has him answering and asking questions, but it is perfectly understandable if Quinn is credited that Novotny told her he did not want to work for AAR.

Based on the testimony of the credited witnesses I find the following:

On September 26 the management of Honeywell, instead of signing a long awaited collective bargaining agreement, informed the employees that it was selling the facility to AAR. The employees were shocked and angry. The facility had been sold to Honeywell not that long ago and the employees felt that their futures were not secure and that their benefits were in jeopardy. Further, the employees were furious that the sale did not include an assumption by AAR of the unexecuted contract with Honeywell; in Novotny's phraseology, AAR was not buying into the Union and the collective bargaining contract was not part of the sale of assets. Employees expressed hostility against Honeywell and there was turmoil in the plant. Union business agent Scagnelli and an employee committee, of which shop steward Novotny was a member, began to negotiate a severance package with Honeywell. Scagnelli instructed the employees to apply for jobs with AAR, to accept any job offers from AAR and to stay together in the Union. Beginning on September 27, Honeywell negotiated to provide layoff pay to employees who received job offers from AAR and more substantial severance pay to those who were not offered jobs.²⁰ Business agent Scagnelli, Novotny and other employees were on the Union negotiating team. More than a few employees wanted to collect severance and retire or go to work somewhere else. However, Honeywell was selling a going business and, with a few exceptions, it was not going to make large severance payments to employees who could have continued to work for AAR. Employees who turned down an AAR job offer were not eligible for severance pay with the exception of an employee or employees named in the agreement.

On September 27 AAR managerial representatives came to the plant. They told the employees that they wanted the Honeywell work force, that AAR was a fair employer, and that it wished to foster growth at the facility. Novotny and the other employees filled out AAR job applications. Novotny did not speak during this meeting. A drug test was administered to the applicants on September 28.

On September 27 Quinn and Napoli were directed by Brinsma to conduct interviews at the facility and to hire as many of the employees as possible so that AAR could begin its operations on Monday, October 2. The interviews took place from September 27 through September 29. Quinn and Napoli used a sheet of questions and noted the employees' answers during the interview. Quinn quickly looked at the application submitted by each employee during the individual's interview. The purpose of the interview was to hire good employees who wanted to work for AAR. Even though AAR wished to hire the entire workforce, company policy dictated that hiring could only take place after the submission of an employment application, a

²⁰ There is no evidence that AAR was party to the negotiations between Honeywell and the Union.

drug screen and an interview. It is undisputed that Quinn did not ask any employees about their Union activities.

On Friday, September 29 Bruinsma and his boss from Chicago met with the employees. Cekada asked the AAR managers about a history of layoffs, turnover and alleged anti-union discrimination. Novotny asked about doing away with the Union, and said the employees did not trust AAR. Bruinsma replied that AAR had changed, that it valued its employees, that it wanted to harness the talents of the work force and “grow the business.”

Quinn interviewed Novotny on Friday morning, September 29. Novotny told Quinn that he was the Union shop steward. In response to her questions, Novotny told Quinn about his duties and that he enjoyed working with the site leader. Novotny told Quinn that he did not like being taken over by AAR and that AAR did not accept the Union or buy into the Union. He said he would like to work for an employer other than AAR. When Quinn asked what he could contribute to the success of AAR Novotny replied that he did not want to work for AAR. Saying “Let’s just leave it at that,” Novotny excused himself and walked out of the interview. Quinn noted a recommendation that Novotny should not be offered a position with AAR. Quinn would not have hired Novotny even if he had not been active in the Union because he had twice told her that he did not want to work for AAR.

Quinn interviewed Cekada who was upset and said that he did not want to work for AAR. Quinn noted a recommendation that he not be hired. She did not know that Cekada was a Union committee member at the time of the interview. Quinn interviewed Werkheiser who told her that in the future he would like to work for airlines. Werkheiser said he could contribute to the success of AAR by doing his job. Quinn noted a recommendation to hire Werkheiser. Quinn interviewed Lieberman who told her that he was burnt out and would prefer not to receive a job offer from AAR. He said that he wanted to work with computers and organize for the Union. Quinn recommended that Lieberman not be hired. Quinn interviewed Dominy who told her that he liked working in a Union shop and that he wanted to organize and start another Union. Quinn recommended that Dominy not be hired. Quinn also interviewed a number of non-unit employees of AAR. Several of these individuals asked that AAR not offer them jobs because they preferred to receive a severance payment from Honeywell. After the interviews Quinn and Napoli told Torzullo which employees did not want to work for AAR. The unit employees who did not want job offers were Cekada, Jackson, Novotny, Lieberman and Dominy. Torzullo said that Cekada had irreplaceable skills and that AAR should offer him a job. Quinn then spoke to Cekada who said he was upset but that he wanted to work. AAR did offer a job to Cekada and he went to work for the Respondent. Cekada was a former shop steward, he was a Union committeeman and he had been outspoken during the September 29 meeting with Bruinsma and other high level AAR managers concerning AAR’s history.²¹ Quinn and Napoli

also consulted Torzullo about certain non-unit employees who preferred to receive severance instead of a job offer and Torzullo gave his opinion about hiring them. After they spoke to Torzullo, Quinn and Napoli gave Bruinsma the list of Honeywell people to be hired.

On Friday, September 29 after Quinn and Napoli had conducted the employee interviews, Torzullo talked to the employees on the shop floor. The employees were angry that Honeywell was selling the facility. Novotny said that he would not want to work for a company that did not recognize the Union. Torzullo, who had not yet been offered a job by AAR, said that the Union did not offer any benefits for a company the size of Hermetic. Goulding was present while Torzullo spoke to the employees. Goulding heard Novotny say that he did not want to work for AAR.

The unit employees had decided that none of them should accept offers from AAR until Honeywell and the Union had concluded the end-out agreement. Some employees received written job offers from AAR before the negotiations were completed. Novotny saw to it that these employees did not accept the offers and that they were returned to AAR. The end-out agreement was signed at 6 PM on September 29. Novotny did not receive an offer from AAR. He received a \$9000 severance payment from Honeywell.

Quinn was informed that Emmanuel Toto had been designated by the Union as the one unit employee eligible to receive a severance payment from Honeywell pursuant to the end-out agreement even though AAR was prepared to make him a job offer. As a result, the Respondent did not offer to employ Toto. Novotny believed that four people had been named in the end-out agreement as not wishing employment by the Respondent. These were Dominy, Lieberman, Jackson and Toto. The General Counsel, agreeing with Novotny that none of these individuals wished to work for AAR and that they all preferred to receive a severance payment, does not allege that any of them were denied jobs in violation of the Act. Novotny never saw what he would consider a final and executed end-out agreement and he was not able to testify under oath what names were actually included in the agreement.

Unit employee Maddox returned from his vacation after the AAR takeover and begged Quinn not to make him an offer so that he could retire and collect his severance. AAR did not offer a job to Maddox.

Goulding saw Novotny at a Christmas party in December 2000 after the filing of the instant unfair labor practice charge. Novotny raised the issue that AAR had not hired him. Goulding did not say that Novotny would have been employed by AAR but for his Union activities.

I find that there is no credible evidence that AAR harbored anti-Union animus and there is no credible evidence that AAR failed to hire Novotny because he was active on behalf of the Union. I find that Novotny was not hired because he told Quinn that he did not want to work for AAR. Even in the absence of any Union activity by Novotny, AAR would not have offered him a job. *Wright Line*, 251 NLRB 1083 (1980), enf’d 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *FES*, 331 NLRB No. 20 (2000).

²¹ The General Counsel’s brief argues at length that AAR’s hiring of Cekada “is fatal to its defense.” The reality is to the contrary. Torzullo urged Quinn and Napoli to hire Cekada even though he knew that Cekada had served as the shop steward for a long time and that he was on the shop committee. Further, at a meeting with Bruinsma, to whom Quinn and Napoli made their hiring recommendations, Cekada had asked questions at least as pointed as Novotny’s about AAR’s labor

relations past. Despite Union activity more lengthy than Novotny’s and outspokenness equal to Novotny’s the Respondent hired Cekada.

CONCLUSIONS OF LAW

The General Counsel has not shown that the Respondent AAR failed to hire James Novotny because of his activities in support of the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²²

²² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recom-

ORDER

The complaint is dismissed.

Dated, Washington, D.C. July 16, 2002

mended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.